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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,132	01/28/2004	Remy Zimmermann	09623V-047600US	4300
20350	7590	04/26/2007	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP			ALVESTEFFER, STEPHEN D	
TWO EMBARCADERO CENTER				
EIGHTH FLOOR			ART UNIT	
SAN FRANCISCO, CA 94111-3834			PAPER NUMBER	
			2173	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/26/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/767,132	ZIMMERMANN, REMY
Examiner	Art Unit	
Stephen Alvesteffer	2173	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 25 November 2005 and 24 July 2006.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-29 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-29 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 28 January 2004 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) Paper No(s)/Mail Date. \_\_\_\_ .  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 20051125 and 20060724.  
5)  Notice of Informal Patent Application  
6)  Other: \_\_\_\_ .

**DETAILED ACTION**

Claims 1-29 are presented for examination. Claims 1, 8, 15, 21, 24, and 27 are independent claims. The Information Disclosure Statements filed on November 25, 2005 and July 24, 2006 have been considered by the examiner.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Walter et al. (hereinafter Walter), United States Patent Application number 2005/0156873.

**Regarding claim 1**, Walter teaches a system for mapping captured multimedia information onto emoticons for insertion into a communication using an Instant Messaging (IM) application, wherein the insertion is based on multimedia information (image) (see Abstract), the system comprising an information capture module (camera) for capturing the multimedia information (image) in the vicinity of a machine on which the user is using the IM application; an information extraction and interpretation module (image selector) communicatively coupled with the information capture module (camera) (see paragraph [0027]), for extracting relevant information from the captured

multimedia information (image) and interpreting it; and a mapping module (pixel array generator) communicatively coupled with the information extraction and interpretation module, for mapping the interpreted information onto an emoticon (see paragraph [0028]).

The instant application defines “multimedia information” as including still images, video, audio, or some combination of images, video, and/or audio (see instant application, paragraph [0047]). Walter teaches the insertion of image information into an Instant Messaging application (see Abstract). The “information capture module” of the instant application can be any camera. Though Walter does not explicitly mention a camera, she does suggest that one can be used to produce emoticons in paragraph [0024].

**Regarding claim 2**, Walter teaches that the multimedia information comprises at least one of audio information, still image information, and video information. Walter teaches that an emoticon can be an arbitrary image (see Abstract, first sentence).

**Regarding claim 3**, Walter teaches an Application Program Interface module for the IM application, communicatively coupled to the mapping module, for inserting the emoticon into the communication using the IM application. The Custom Emoticon Engine (CEE) of Walter performs the same function as the Application Program Interface module of the instant application (see paragraph [0023]).

**Regarding claim 4**, Walter teaches that the emoticon is predefined by the IM application (see paragraph [0030]).

**Regarding claim 5**, Walter teaches that the emoticon is predefined by a third-party application. In Walter, paragraph [0023], it is clear that the invention can be used in many different types of applications.

**Regarding claim 6**, Walter teaches that the emoticon is created by the user (see paragraph [0018]).

**Regarding claim 7**, Walter teaches that the emoticon is created by the user by processing captured multimedia information (see paragraph [0024]).

**Claims 8-14** recite a method with substantially the same limitations as the system of claims 1-7, respectively. Therefore, claims 8-14 are rejected under the same rationale. It should be noted that claims 11-13 refer to a plurality of emoticons as opposed to a single emoticon, which Walter also anticipates in paragraph [0030]. It should be further noted that the trigger of recited in claim 14 is being interpreted as pressing the button on a camera to take a photograph.

**Claims 15 and 16** recite a method with substantially the same limitations as the system of claims 1 and 3, respectively. Therefore, claims 15 and 16 are rejected under the same rationale.

**Regarding claim 17**, Walter teaches storing the emoticon for use in a later IM communication using the application (see paragraph [0030]).

**Regarding claim 18**, Walter teaches that the step of processing the received captured multimedia information to create an emoticon comprises reducing the size of the captured multimedia information (see paragraph [0028]).

**Regarding claim 19**, Walter teaches that the step of processing the received captured multimedia information to create an emoticon comprises reducing the resolution of the captured multimedia information (see paragraph [0028]). The resolution of the emoticon after reduction in size is inherently reduced.

**Regarding claim 20**, Walter teaches that the step of processing the received captured multimedia information to create an emoticon comprises selecting a frame from a plurality of frames of the captured multimedia information (see paragraph [0049]).

**Claims 21-23** recite a system with substantially the same limitations as the system of claims 1-3, respectively. Therefore, claims 21-23 are rejected under the same rationale.

**Claims 24-26** recite a method with substantially the same limitations as the system of claims 1-3, respectively. Therefore, claims 24-26 are rejected under the same rationale.

**Claims 27-29** recite a system with substantially the same limitations as the system of claims 1-3, respectively. Therefore, claims 27-29 are rejected under the same rationale.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- Yomoda, United States Patent Application 2005/0078804, teaches using an image of a user's face to express emotional state during instant messaging.
- Ostermann et al., United States Patent 7,035,803, teaches sending multimedia messages using customizable background images.
- Day et al., United States Patent 7,039,676, teaches using video analysis to transmit gesture data during a chat session.
- Van Stuivenberg et al., United States Patent Application 2006/0252455, teaches a multimedia communication device to capture and insert a multimedia sample.

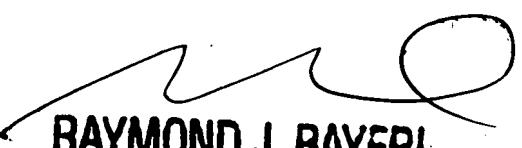
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Alvesteffer whose telephone number is (571) 270-1295. The examiner can normally be reached on Monday-Friday 10:30AM-7:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cabeca can be reached on (571)272-4048. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Stephen Alvesteffer  
Examiner  
Art Unit 2173

4-17-2007



RAYMOND J. BAYERL  
PRIMARY EXAMINER  
ART UNIT 2174